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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,538	02/09/2001	Quinn H. Lipin		5759
7590	11/03/2006		EXAMINER	
Quinn Lipin Net-U-Net, L.L.C. 16B Upham Street Newton, MA 02494			RETTA, YEHDEGA	
		ART UNIT	PAPER NUMBER	
		3622		

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/779,538	LIPIN, QUINN H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yehdega Retta	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 August 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

This office action is in response to the Request for Continued Examination filed August 11, 2009. Applicant also amended claims 1 and 16. Claims 1-22 are currently pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant specification under abstract teaches “(t)he system connects the customer to the selected Merchant site and to the clearinghouse site which frames the customer's view”. The abstract also discloses the frames lists other network sites that are selected by the clearinghouse site. The abstract further includes that the sales revenue is generated for a Merchant and commission revenue is generated for the referring affiliate based on purchases by an end user Customer during the initial and subsequent visits to the clearinghouse site. The specification however does not teach the compensation is paid responsive to action to an affiliate and clearinghouse, wherein the clearinghouse site receives compensation from each said action or based on percentage of an amount paid to affiliate or determined as calculation of gross revenue generated by an affiliate and clearinghouse or the compensation is divided among at least the affiliate and clearinghouse.

In regards to the compensation, the specification teaches (see pp 8-10), the sever associated with the primary site also tracks the affiliate site though which the user entered the merchant-affiliate network, in that way, each revenue-generating activity can be associated with the appropriate affiliate site. Further the specification discloses that a sub-affiliate is treated like an affiliate with respect to revenue payments by the merchants, however an affiliate also can receive revenue when a user accesses the merchant-affiliate network through a sub-affiliate. The specification provides a scenario wherein a merchant pays affiliate 10% of gross sales based on competed transactions and also pays an affiliate 30 % of the revenue paid to the affiliate's sub-affiliate, etc. Nowhere in the specification including the abstract discloses a clearinghouse being paid or compensated, therefore is considered new matter.

Claims 1-22 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant specification under the abstract teaches "(t)he system connects the customer to the selected Merchant site and to the clearinghouse site which frames the customer's view". The abstract also discloses the frames lists other network sites that are selected by the clearinghouse site. The abstract further includes that the sales revenue is generated for a Merchant and commission revenue is generated for the referring affiliate based on purchases by an end user Customer during the initial and subsequent visits to the clearinghouse site.

Applicant asserts that the term clearinghouse is a generic name for an information distribution system utilizing electronic information distribution media such as the Internet.

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Further the applicant asserts that a related term “clearinghouse node” refers to a system for retrieving and providing (meta-) data that is structured for the purpose of meeting requests of general users who should retrieve and provide information on metadata. Applicant asserts the clearinghouse, as a whole, is set up through systematic combination of each clearinghouse node using the Internet or other appropriate means. Applicant indicates that the “clearinghouse” language was originally recited in the claims as filed, as well as the abstract of the disclosure, that lexicography being imputed to the entirety of the pending application.

Examiner is aware that the term clearinghouse was originally recited in the claim and the abstract. However there is nothing disclosed in the specification that ties the term clearinghouse to the abstract. The body of the specification is where the enablement or the invention is disclosed. Examiner is also aware that the applicant is his own lexicography, however applicant is only defining what is disclosed in the abstract. In order to have some understanding of the disclosure and enablement, applicant need to tie what he/she means of the clearinghouse in regard to the disclosure.

In regard to the term clearinghouse examiner is only referring to what is disclosed in the abstract since there is no mention of the term clearinghouse in the rest of the application and applicant would not explain the term based on the disclosure.

According to applicant’s disclosure the closest thing to the term “clearinghouse” is the server associated with the primary site (see pp 8-10). Also since the claim recites that the clearinghouse sends information to the customer site to provide framing, and according to applicant’s disclosure the primary site or the server associated with the primary server provides the same service, until applicant points out the term “clearinghouse” in the specification the

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examiner will interpret the term "clearinghouse" as the server associated with the primary site or the primary site. Based on this interpretation the rejection of "103" as stated below is applied and the prior arts are considered appropriate.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 16, recite "for compensating a referring affiliate with feedback to the initiating web site vendor not limited to a strictly 1-to-1 relationship between a selected Merchant and a selected affiliate". It is unclear what is considered 1-to-1 relationship between a selected merchant and a selected affiliate. As claimed the scope of the limitation cannot be determined since it is unclear what the relationship between the merchant and affiliate is.

Applicant should claim what the step or method is rather than what it is not. The claim recites information and linking instructions about one or more products or services available for commercial transaction with at least one Merchant is displayed to a customer visiting the Affiliate site (one of the Affiliate site). Further the claim recites Customer may by choosing an information display on the Frame be transported to another Merchant site, a non-Merchant site, a Clearinghouse maintained search engine or listing of other sites that may be of interest to the Customer wherein the Clearinghouse stores and maintains the Customer's identification code, tracks transactions the Customer makes with any Merchant that is a member of the network, and

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tracks intelligence related to Affiliate-generated transactions for compensating a referring affiliate with feedback to the initiating web site vendor not limited to a strictly 1-to-1 relationship between a selected Merchant and a selected affiliate.

The claim recites tracking customer's transaction with any Merchant that is a member and also tracks affiliate-generated transactions for referring affiliate. Examiners understand of the "with feedback to the initiating web site vendor" is that if a customer started at one web site (sub-affiliate) and is referred to another site (affiliate) through links and that site refers the customer to another site (merchant site). The last site (merchant site) compensates the first and second sites, and the second site also compensates the first site, which means every referring site is compensated (which is not a 1-to-1 relationship).

Claims 1 and 16 recite the limitation "for compensating a referring affiliate with feedback to the initiating web site vendor". There is insufficient antecedent basis for this limitation in the claim.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos et al. (US, 6,029,141) in view of Tobin (US 6,141,666).

Regarding claim 1 Bezos teaches customers interconnected to a network, each customer having a unique identification code (see col. 8 lines 17-32; an affiliate site (associate web site) with linking instruction about products or services at a merchant (associated web site), a clearinghouse (merchant website); clearinghouse site sending information and programming to the customer site so that the superimposed upon part of the Merchant's site the customer sees other information within a Frame (see col. 12 lines 14-26); customer may by choosing an information display on the Frame be transported to another merchant site, a non-merchant site, a clearinghouse or listing of other sites, wherein the clearinghouse maintains the customer identification code, tracks transactions the customer makes with any Merchant and tracks intelligence (data) related to the Affiliated-generated transactions for compensating a referring affiliated (see col. 1 line 62 to col. 2 line 65, col. 3 lines 8-42, col. 6 lines 1-58, col. 7 lines 6-53, col. 8 lines 1-16 col. 8 lines 49-67). Bezos failed to explicitly teach the compensating a referring affiliate with feedback to the initiating affiliate site, it is taught in Tobin. Tobin teaches token appended as a parameter to all of the links, allowing information such as where the user's request originated from to be passed along as the user navigates through the site. Tobin teaches server tracking the number of orders placed by customers through the link (see col. 10 lines 29-63). Further, Tobin teaches the tokening.cgi process enables the site token information to be passed from page to page (see col. 11 lines 1-48). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Tobin's token system of enabling the token appended as a parameter to all of the links, allowing information such as where the user's request originated from (identification of a site from which a referral is obtained) to be passed along as

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the user navigates through the site, in Bezos's referral system, in order to pay compensation to all referring sites.

Regarding claims 2 and 3, Bezos teaches affiliate may receive credit from multiple Merchants arising from transaction from initial and subsequent visits by the customer to the clearinghouse; customer that visits any affiliate site and selects a merchant display is transported both to the merchant's site and a Frame with additional information of possible interest to the customer (col. 11 line 1 to col. 12 line 63, fig. 8-10c).

Regarding claims 4-8, Bezos teaches compensation paid responsive to an action to an affiliate (see col. 7 lines 20-40 and col. 8 lines 49-67 and col. 11 line 63 to col. 12 line 15). Since claim 4 includes an alternative limitation (i.e., affiliate and/or clearinghouse), the prior art only need to teach one or the other, not both.

Regarding claims 9-12, Bezos teaches tracking the number of hits, including frequency of visits to a link (impression) (see col. 16 lines 20-26, col. 18 lines 30-38). Bezos teaches banners displayed on the information display (see fig. 8).

Regarding claims 13-15, Bezos does not explicitly teach the tracking includes frequency of visits of sub-affiliates. Tobin teaches token appended as a parameter to all of the links, allowing information such as where the user's request originated from to be passed along as the user navigates through the site. Tobin teaches server tracking the number of orders placed by customers through the link (see col. 10 lines 29-63). Further, Tobin teaches the tokening.cgi process enables the site token information to be passed from page to page (see col. 11 lines 1-48). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Tobin's token system of enabling the token appended as a parameter to all of the

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links, allowing information such as where the user's request originated from (identification of a site from which a referral is obtained) to be passed along as the user navigates through the site, in Bezos's referral system, in order to pay compensation to all referring sites.

Regarding claims 16-22, Bezos teaches interconnecting customers to a network, each customer having a unique identification code (see col. 8 lines 17-32); displaying information and linking instruction about products or services at a merchant (associated web site), interconnecting a clearinghouse (merchant website); to the network programmed to receive information regarding display of or selection of said information; enabling customer to be transported to another site from a group including a merchant, a non-merchant site, a search engine or listing of other sites, wherein the clearinghouse maintains the customer identification code, tracks transactions the customer makes with any Merchant and tracks intelligence (data) related to the Affiliated-generated transactions for compensating a referring affiliated (see col. 1 line 62 to col. 2 line 65, col. 3 lines 8-42, col. 6 lines 1-58, col. 7 lines 6-53, col. 8 lines 1-16 col. 8 lines 49-67). Bezos teach the clearinghouse site sending information and programming to the customer site so that the superimposed upon part of the Merchant's site the customer sees other information within a Frame (see col. 12 lines 27-42). Bezos failed to explicitly teach the compensating a referring affiliate with feedback to the initiating affiliate site, it is taught in Tobin. Tobin teaches token appended as a parameter to all of the links, allowing information such as where the user's request originated from to be passed along as the user navigates through the site. Tobin teaches server tracking the number of orders placed by customers through the link (see col. 10 lines 29-63). Further, Tobin teaches the tokening.cgi process enables the site token information to be passed from page to page (see col. 11 lines 1-48). It would have been obvious

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to one of ordinary skill in the art at the time of the invention to implement Tobin's token system of enabling the token appended as a parameter to all of the links, allowing information such as where the user's request originated from (identification of a site from which a referral is obtained) to be passed along as the user navigates through the site, in Bezos's referral system, in order to pay compensation to all referring sites.

Based on the assumption that applicant discloses a clearinghouse that is different than what is addressed above, then the following rejection is applied.

Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos et al. (US, 6,029,141) further in view of Gupta (US 6,487,538).

Regarding claims 5-10, Bezos does not explicitly indicate that the clearinghouse receiving compensation from each action. Gupta teaches that the web host receiving payment form the advertiser (any merchant or affiliate receiving service form the host site) (see col. 4 lines 45-51. Bezos teaches tracking the number of hits, including frequency of visits to a link (impression) (see col. 16 lines 20-26, col. 18 lines 30-38). Gupta teaches different payment schemes for online advertising, for example, an advertiser paying based on the number of times different users access a web site (referred to as hits or page impressions). Alternatively, an advertiser only paying if a user clicks on the advertiser's banner or icon and views the advertiser's web page (referred to as a click-through). Further, a web host also receiving payment based on any completed transactions that result from a click through (e.g., the web host receives a percentage of the payment received by the advertiser from the user) (referred to as referral commissions). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the Bezos site (merchant site) to receive payment from the

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merchants listed on the site (advertising), in order to earn profile form the service provided by the host site.

*Response to Arguments*

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR

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PRIMARY EXAMINER

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